

(2)
No. 87-1171

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

WILLIAM R. CODY, et al.,

Petitioners,

vs.

CAROLE HILLARD, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

MARK SMITH
Assistant Attorney General
State Capitol
Pierre, South Dakota 57501-5090
Telephone: (605) 773-3215

Attorneys for Respondents

25/11

QUESTION PRESENTED

Whether the Court of Appeals erred when it, after reviewing the facts presented to the trial court and applying the appropriate legal standards to those facts, reversed the decision of the district court and found that double-celling at the South Dakota State Penitentiary does not constitute cruel and unusual punishment under the eighth amendment to the United States Constitution?



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LIST OF PARTIES

Petitioner William R. Cody represents a class of prisoners at the South Dakota State Penitentiary.

Respondents are: Carole Hillard, President of the South Dakota Board of Charities and Corrections; Ted Spaulding, D.A. Gehlhoff, Frank Brost and Lyle Swenson, members of the Board; Jim Smith, Executive Secretary to the Board; and Herman Solem, Warden, South Dakota State Penitentiary.

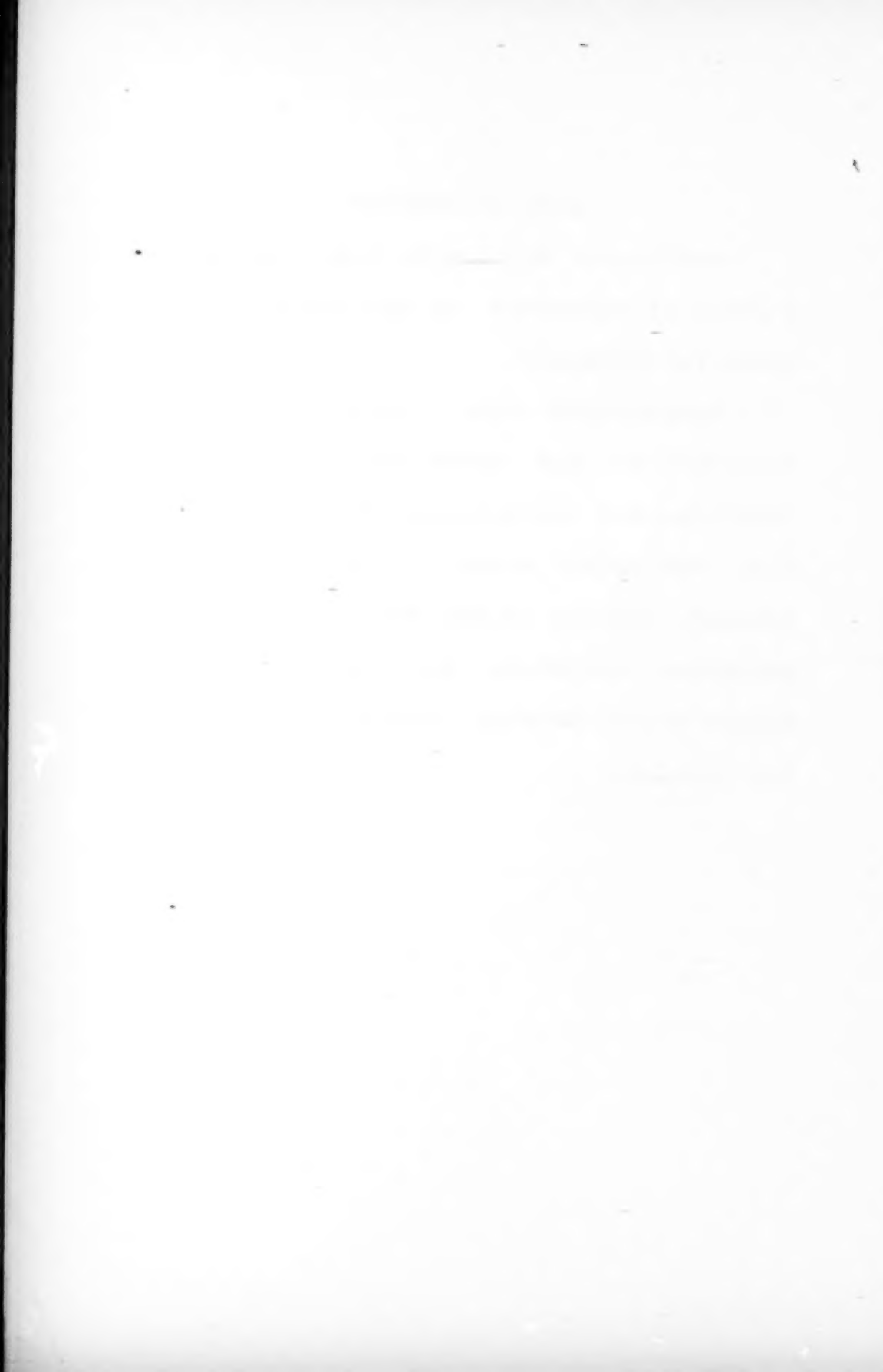


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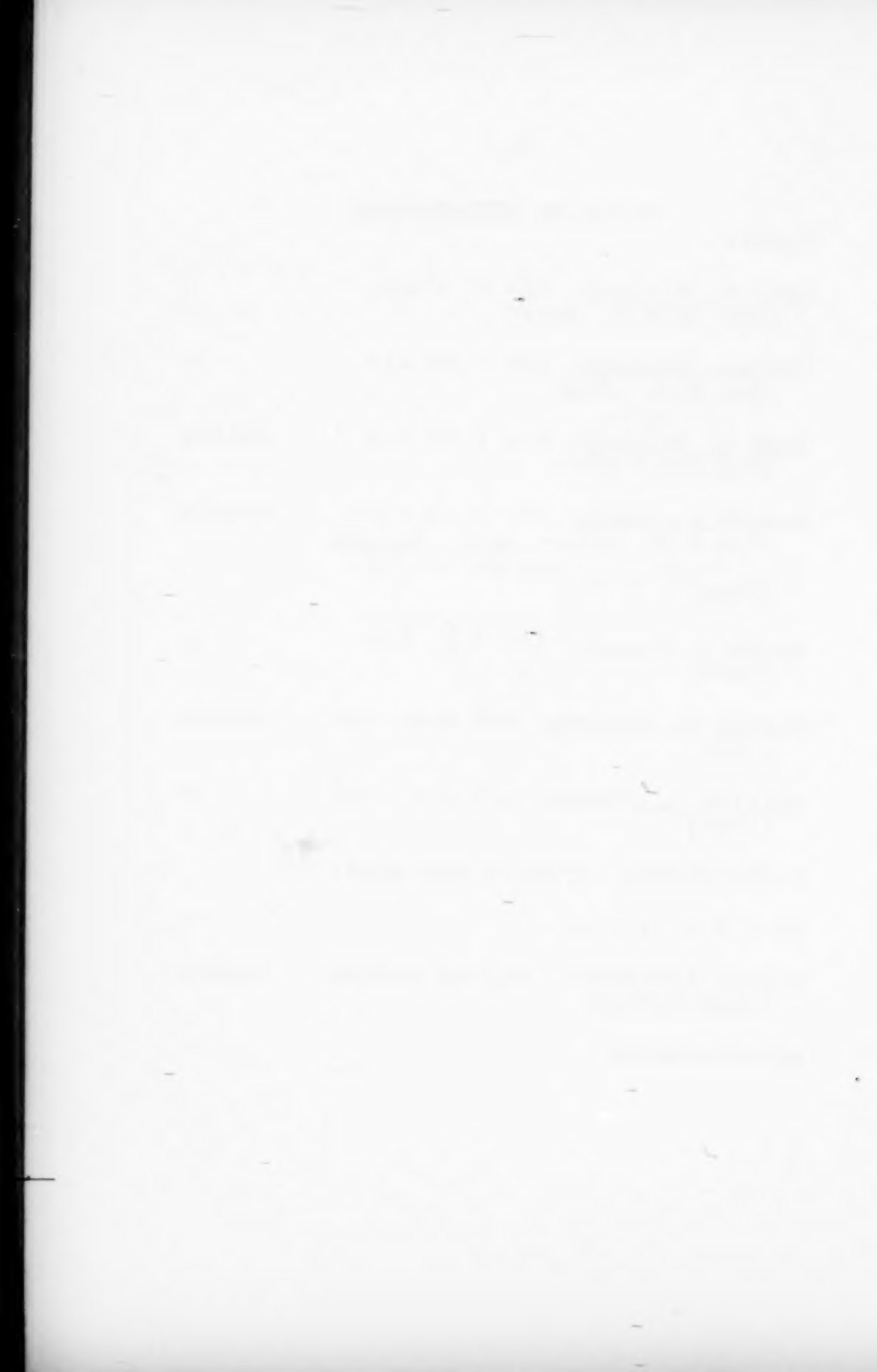
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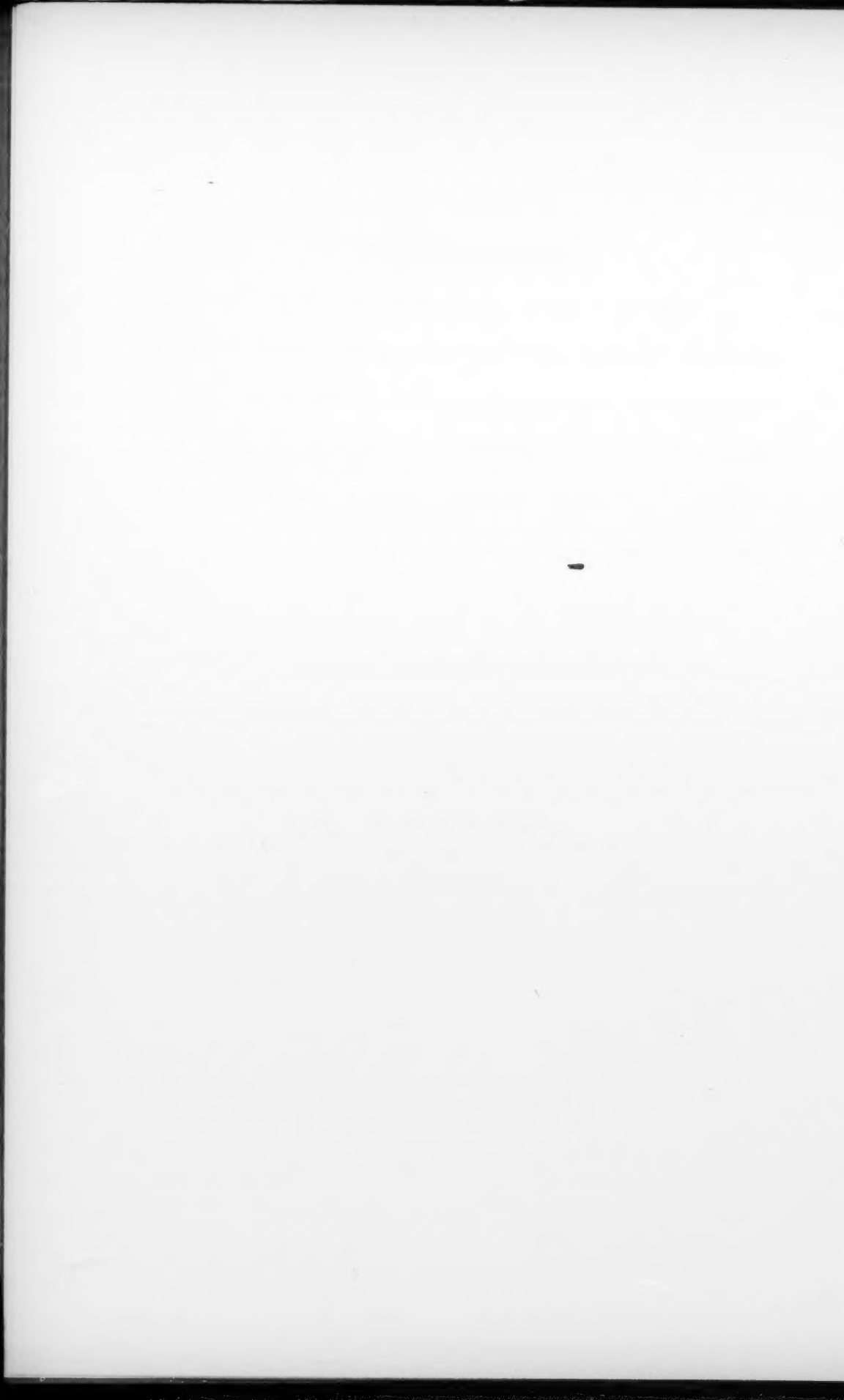
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MISCELLANEOUS:



OPINIONS BELOW

The en banc opinion of the United States Court of Appeals for the Eighth Circuit is reported at 830 F.2d 912. The opinion of the panel is reported at 799 F.2d 447. The trial court opinion is reported at 599 F. Supp. 1025.



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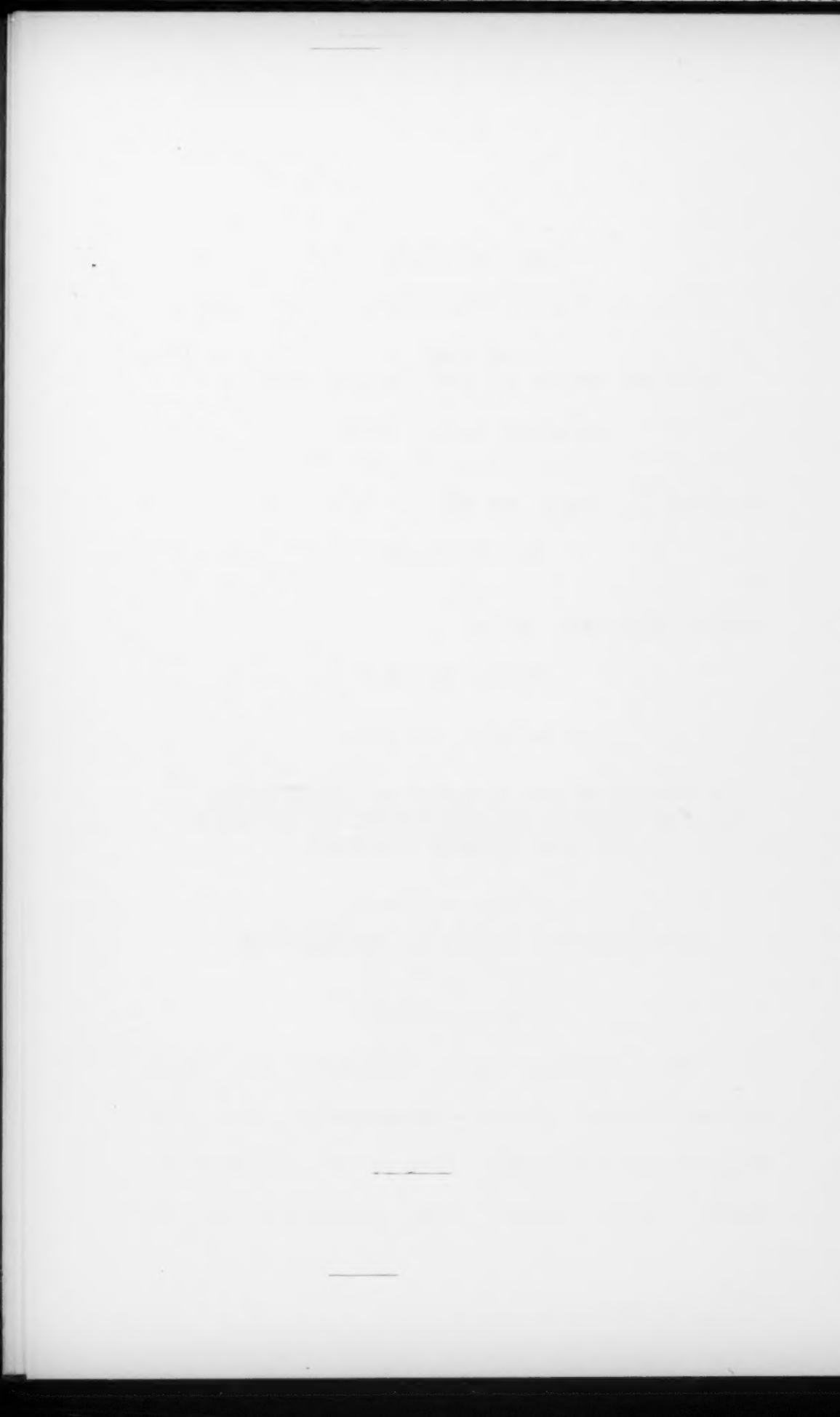
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JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Eighth Circuit were issued on October 6, 1987. This Court has jurisdiction to



review the judgment pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves 42 U.S.C. § 1983 and the eighth amendment to the United States Constitution. 42 U.S.C. § 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The eighth amendment to the United States Constitution is as follows:

Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted.



STATEMENT OF THE CASE

This class action was begun in 1980 by inmates at the South Dakota State Penitentiary (SDSP). The inmates brought suit under 42 U.S.C. § 1983, challenging the conditions of confinement as violative of their constitutional rights. Respondents (defendants below) are the members of the South Dakota Board of Charities and Corrections and the Warden at the South Dakota State Penitentiary. The inmate class sought declaratory and injunctive relief against Respondents.

In June 1983 trial to the court began in Sioux Falls, South Dakota, before the Honorable Donald J. Porter, Chief United States District Judge. After approximately one and one-half weeks of testimony, the trial court declared a recess and the trial was not resumed until



December 13, 1983. Testimony was completed on December 16, 1983.

On May 31, 1984, the trial court issued its Memorandum Opinion. Cody v. Hillard, 599 F. Supp. 1025 (D.S.D. 1984). The Memorandum Opinion held that the conditions of confinement at the South Dakota State Penitentiary violated the eighth and fourteenth amendments to the United States Constitution. The trial court ordered the prison officials to prepare plans to cure the constitutional violations. These plans were submitted in the summer of 1985. After extensive negotiations, the parties entered into a consent decree covering certain improvements to be made at the South Dakota State Penitentiary.

On July 8, 1985, the trial court entered two Final Orders. The first dealt with the partial consent decree. The

second dealt with the remaining contested issues. The portion of this order pertinent to this petition ordered that except in the case of certain emergencies, the daily population of the South Dakota State Penitentiary was to be reduced in compliance with a schedule aimed at reducing the population to 95% of that specified by the American Corrections Association as the capacity of the South Dakota State Penitentiary. This order, then, eliminated double-celling at the South Dakota State Penitentiary.

On appeal, a divided panel of the Court of Appeals affirmed the trial court's ban on double-celling. Cody v. Hillard, 799 F.2d 447 (8th Cir. 1986). The Court of Appeals, en banc, reversed, with three judges dissenting. Cody v. Hillard, 830 F.2d 912 (8th Cir. 1987) (en banc).

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REASONS FOR DENYING THE PETITION

I

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DECIDED THE CASE CONSISTENT WITH THE DECISIONS OF OTHER CIRCUITS.

Petitioners claim that the decision by the Court of Appeals is inconsistent with the decision of the Seventh Circuit in French v. Owens, 777 F.2d 1250 (7th Cir. 1985), cert. denied, ___ U.S. ___, 107 S. Ct. 77 (1986). Contrary to that claim, the decision by the Court of Appeals herein is consistent not only with the decision of the Seventh Circuit, but also with the decisions of this Court, particularly the seminal case of Rhodes v. Chapman, 452 U.S. 337 (1981).

In Rhodes, this Court reviewed the question of whether double-celling of inmates at the Southern Ohio Correctional Facility was per se unconstitutional in



violation of the eighth amendment's prohibition against cruel and unusual punishment. After finding that double-celling was not per se unconstitutional, this Court, in Rhodes, made it clear that a determination that a deprivation of eighth amendment rights has occurred must be made by reviewing the totality of the circumstances. Rhodes, 452 U.S. at 345-347.

In French v. Owens, supra, the Seventh Circuit followed an analysis similar to that approved by this Court in Rhodes; that is, whether the totality of the circumstances leads to a conclusion that the prisoner's right to be free from cruel and unusual punishment has been violated. After analyzing the situation found at the Indiana Reformatory at Pendleton, the Seventh Circuit determined that all of the circumstances led to the



conclusion that the eighth amendment's protections against cruel and unusual punishment had been violated. French, 777 F.2d at 1258.

In the instant case, like the Seventh Circuit in French v. Owens, the Court of Appeals followed the dictates of Rhodes. Looking at the particular circumstances of the case presented herein, the Court of Appeals determined that the double-celling which occurs at the South Dakota State Penitentiary does not violate the eighth amendment protection from cruel and unusual punishment. Cody v. Hillard, 830 F.2d 912, 914 (8th Cir. 1987) (en banc). Like each court which has reviewed an eighth amendment claim since this Court's decision in Rhodes, the Court of Appeals reviewed all of the circumstances. After making this review, the Court of Appeals concluded that the double-celling at the



South Dakota State Penitentiary was not a practice that violates the eighth amendment prohibitions against cruel and unusual punishment.

Petitioners cannot deny that the Court of Appeals analyzed the double-celling issue in accordance with the dictates of this Court in its Rhodes decision. Petitioners simply do not agree with the conclusion the Court of Appeals reached after it analyzed the case in light of Rhodes. Because the Petitioners apparently agree with the Seventh Circuit's analysis in French v. Owens, they are now making a claim that there is a conflict among the circuits because the Court of Appeals did not reach the same conclusion as the Seventh Circuit did in French v. Owens.

Simply stated, the facts and circumstances presented to the courts in



French v. Owens with respect to the Indiana Reformatory in Pendleton are different than the facts and circumstances presented to the courts in the instant case with respect to the South Dakota State Penitentiary in Sioux Falls. Each situation must be reviewed on a case-by-case basis. As long as the proper legal principles are used in making such an analysis, any claim of a conflict in the circuits can be based only upon the different factual situation presented in each case. These factual differences are not the basis for this Court to make a decision to review the case on its merits. Because the Court of Appeals followed the appropriate and proper legal principles in making its decision herein, review by this Court on the merits is inappropriate. Therefore, the petition for a writ of certiorari should be denied.



II

THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT
DECIDED THE CASE IN ACCORD WITH
THE APPROPRIATE DECISIONS OF
THIS COURT.

A. Petitioners' claim that the Court of Appeals erred by applying a "torture or sadistic punishment" standard in reaching the conclusion that no eighth amendment violation existed with the double-celling at the South Dakota State Penitentiary. In making this claim, Petitioners take out of context the following observation of the Court of Appeals:

The present case is light years removed from the torture, cruel deprivation, and punishment with which the Cruel and Unusual Punishments Clause is concerned.

Cody, 830 F.2d at 915. In focusing on this observation, Petitioners ignore the fact that the Court of Appeals followed

the standards set by this Court in its decisions dealing with the eighth amendment prohibition against cruel and unusual punishment. See generally, Rhodes, supra; Whitley v. Albers, 475 U.S. 312 (1986).

For example, the Court of Appeals noted:

The Court made clear in Rhodes that "when the conditions of confinement compose the punishment at issue, "those conditions" must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." The Court referred to conditions that are "totally without penological justification," as the kind of conditions that violate the Eighth Amendment. Recently, the Court elaborated further on this standard in Whitley v. Albers, 475 U.S. 312, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986). Justice O'Connor, writing for the Court, observed that "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct

prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cell block."

Cody, 830 F.2d at 913 (citations omitted).

Later, the Court of Appeals concluded:

The conditions described in this record cannot be said to inflict pain or amount to punishment, nor can prison administrators making "sincere efforts" be said not to be acting in "good faith."

Cody, 830 F.2d at 915. In particular, the

Court of Appeals observed:

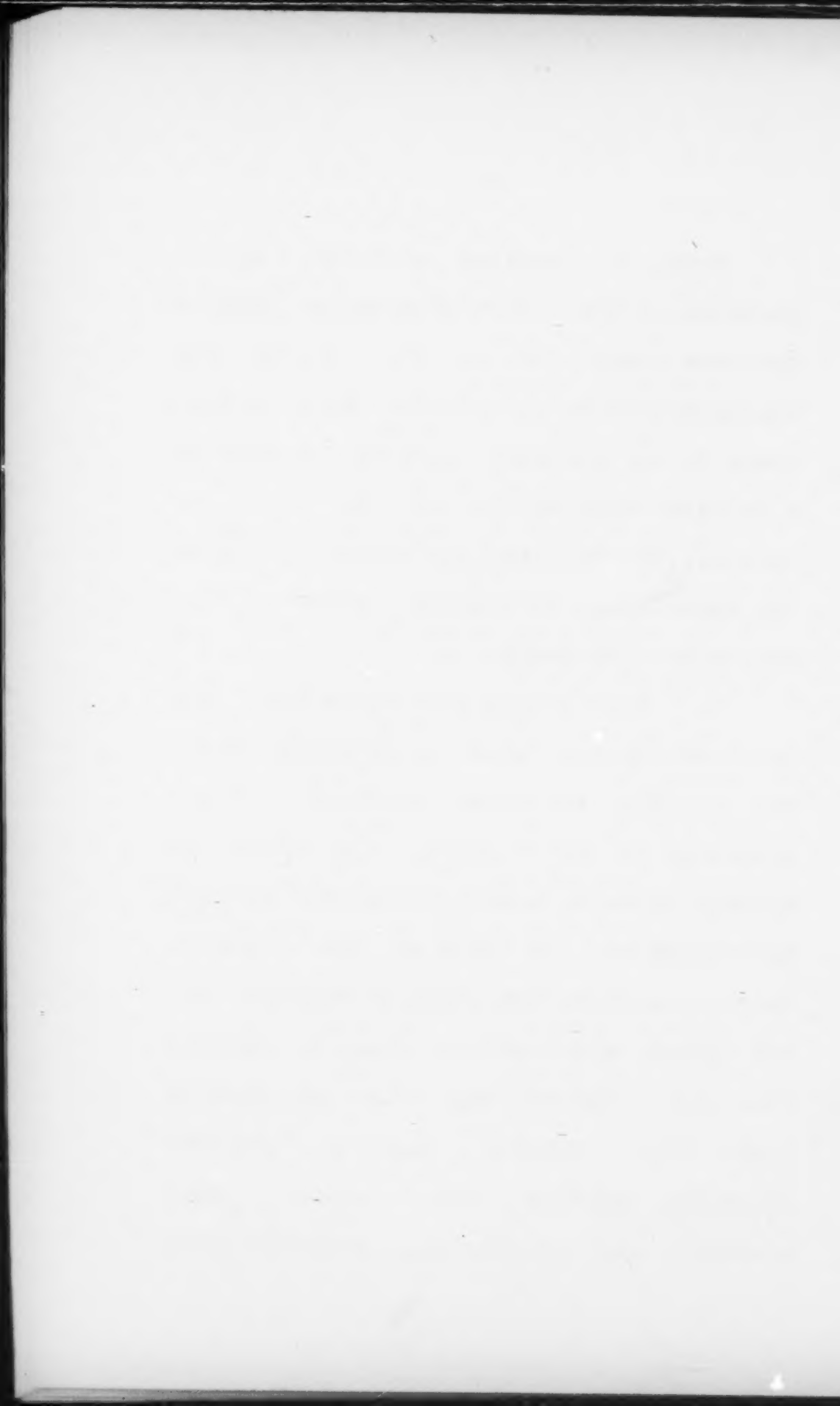
The lack of anything in this record . . . even remotely showing any conditions of confinement that fall below the constitutional standards elucidated in cases such as Rhodes and Whitley, reveals the impropriety of the District Court's order.

Id.



Thus, a reading of the entire decision of the Court of Appeals reveals that the court did, in fact, follow the standards set by this Court. Petitioners' claim to the contrary, made by focusing on a single observation of the Court of Appeals, is meritless and certainly lacks the importance to require review of the merits by this Court.

B. Petitioners also claim that the Court of Appeals failed to properly apply the clearly erroneous standard. Thus, according to Petitioners, the Court of Appeals erred by substituting its factual determinations for that of the District Court. In fact, the Court of Appeals did not ignore the District Court's factual findings. Instead, the Court of Appeals took the District Court's factual findings, applied the correct legal standard and found no constitutional



violation. For example, the Court of Appeals made the following observation:

Even granting that the District Court's factual findings are correct, double-celling at SDSP simply does not evince the "wanton and unnecessary infliction of pain" necessary to constitute a violation of the Eighth Amendment. Rhodes, 452 U.S. at 347, 101 S. Ct. at 2399.

Cody, 830 F.2d at 914.

Petitioners complain because they are upset that the Court of Appeals, in applying the proper legal standards, reached a different conclusion from the District Court. Of course, the District Court had found in their favor. Review of the application of the proper legal standards to the facts of the case is what appeals are all about. The fact that an appellate court reaches a different conclusion than the trial court, however, is not grounds for review on the merits by



this Court. Thus, the request for review by this Court must be denied.

C. Finally, Petitioners claim that the Court of Appeals failed to follow the dictates of Hutto v. Finney, 437 U.S. 678 (1978). Particularly, Petitioners claim that the Court of Appeals' decision failed to recognize the broad remedial powers possessed by the federal courts in prison conditions lawsuits such as the instant case. Petitioners, in making this claim, fail to recognize that, although broad remedial powers are possessed by courts in this type of action, such remedial powers have never included the authority to issue orders dealing with activities that are not contrary to nor in violation of some statutory or constitutional provision.

The Court of Appeals, after determining that double-celling did not violate the eighth amendment, looked at

the District Court's order. In reviewing that order, the Court of Appeals addressed the claim raised by Petitioners concerning the remedial powers of the federal courts.

The Court of Appeals concluded:

The District Court detailed such problems in these areas as unsanitary practices in storing and preparing food, the use of untrained inmates to provide medical services to other inmates, inadequate ventilation and plumbing, and substandard electrical wiring and other fire hazards. Whatever the merit of these findings, there has been no showing, and the District Court has made no finding, that the elimination of double-celling will alleviate these problems to any perceptible degree. An appropriate remedy would relate to correction of the constitutionally deficient conditions that have been found to exist, if any there be, rather than to the elimination of double-celling.

Cody, 830 F.2d at 914 (emphasis added).

The Court of Appeals was correct in finding that the District Court's remedial

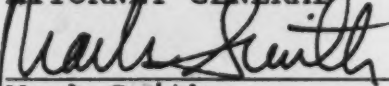
order could deal only with matters that required correction in order to meet minimum constitutional standards. Therefore, no question is presented concerning the scope of the District Court's remedial order that warrants further review by this Court.

CONCLUSION

Based upon the foregoing arguments, Respondents respectfully requests that the Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit be in all ways denied.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL



Mark Smith
Assistant Attorney General
State Capitol
Pierre, S.D. 57501-5090
Telephone: (605) 773-3215

Attorneys for Respondents

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